

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **GLENNA MCCLURE**, on January 8, 2003 at 3:00 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Rod Bitney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Alan Olson, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Eileen J. Carney (D)
Rep. Tim Dowell (D)
Rep. Daniel Fuchs (R)
Rep. Hal Jacobson (D)
Rep. Jeff Laszloffy (R)
Rep. Scott Mendenhall (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Brennan Ryan (D)
Rep. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Glenna McClure, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB96, 1/6/2003; HB168,
1/6/2003; HB 131, 1/6/2003
Executive Action: none

HEARING ON HB 96

Sponsor: REPRESENTATIVE RONALD DEVLIN, HD 3, EASTERN MONTANA

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 2.8 - 6.0}

REPRESENTATIVE RONALD DEVLIN, HD 3, EASTERN MONTANA, said that he was sponsoring this bill as a request from the Office of Budget and Program Planning (OBPP). It is a component of the executive budget. Currently there is a temporary tax credit given to the advanced telecommunications industry for its infrastructure. The credit is up to a maximum of two million dollars per year and it is for 20% of the investment that is made with no carry forward or carry back. There are three sections of the law, 15-53-202, 201, and 203 were temporarily schedule to be repealed anyway (Section 202 on July 1, 2003 and Section 203 on July 1, 2004). The fiscal note indicates that there is a \$300,000 impact on each fiscal year (2004-2005). This may be inaccurate, since the credit was to terminate before FY 2005. This was one of the tax credits that was scheduled to be revoked in the executive budget.

Proponents' Testimony: None

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 6.1 - 13.6}

Jeff Feiss, General Manager of the Montana Telecommunications Association, stated that his organization, although reluctant, is in opposition to HB 96. In the 1999 Legislative Session the rate of some corporate taxpayers' property taxes were reduced from 12% to 6% and a telecommunications retail excise tax was instituted. The tax was to compensate for the reduction in property tax. The increase in excise tax seemed to balance out the decrease in property tax. In the 2001 session, however, there was a difference of five million dollars in revenues. Instead of raising the retail excise tax that would be imposed on the customers, we offered to terminate the tax credit for advanced telecommunications infrastructure projects which roughly equaled five million dollars over the biennium. The tax credit was used for two years to develop advanced telecommunications infrastructures. It was suspended for the biennium and has one year left. We encourage the State to suspend rather than terminate the tax credit. The tax credit helps making marginal

business decisions. Since this is a 20% tax credit, it means that 80% is being invested. Although it is less tax that the state would receive, the state is receiving the benefit of four times more investment. There is some confusion with the fiscal note.

Informational Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 13.8 - 14.0}

Andy Poole, Department of Commerce, said that he has been involved in administering the tax credit program for the two years that it was in force and is available to answer questions.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 14.3 - 23.5}

REPRESENTATIVE CARNEY asked for some examples of projects that were helped by having the tax credit. **Mr. Feiss** indicated that Midrivers Telephone Cooperative, based out of Circle, used some of the credit for some infrastructure projects either to deploy cable modem service or DSL service for other high-speed internet access. Other companies used the credit to help deploy some broad band internet services.

REPRESENTATIVE CARNEY asked how much of this tax credit was used. **Andy Poole** said that the credit was not used to the maximum during the first year because of the time taken to implement it. For the calendar year 2000 there was about \$200,000 allocated out of the two million dollars. The first full year of the program approximately one half of the tax credit was used.

REPRESENTATIVE BROWN asked Andy Poole what affect the tax credit program has on his job. **Andy Poole** said that as Administrator of the Business Resource Division, this program has little affect on his job. When this tax credit was passed, the Department of Commerce did not get additional FTE (Full-Time Equivalent) or authority to administer the program.

REPRESENTATIVE RICE asked if the repeal of this tax credit will affect the customers through a rate increase. **Mr. Feiss** said, "No."

REPRESENTATIVE FUCHS asked if someone from the Department of Revenue could give some clarification on the fiscal note. **Gene Walborn, Department of Revenue**, said he suspected that the fiscal note was actually written for two fiscal years.

REPRESENTATIVE CARNEY asked if **REP DEVLIN** could explain what was the \$300,000 impact according to the fiscal note. **REP. DEVLIN** said that the \$300,000 that would have been used by the tax credit will not be expended from FY 2004 and FY 2005 the general fund balance.

REPRESENTATIVE CARNEY asked which budget this was part of. **REP. DEVLIN** indicated that this was part of the executive budget which is no longer the base budget.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 23.5 - 25.8}

REPRESENTATIVE DEVLIN indicated that the tax credit was offered as an incentive for more infrastructure into telecommunications. His local phone company has taken advantage of this tax credit to get into broad band internet and high-speed internet connections. He said that after speaking with a member of his local phone company, it appears that this tax credit doesn't have a great affect on their company. This bill is being offered in relation to the budget problems in Montana. Although it is a small amount, we have to start somewhere.

HEARING ON HB 168

Sponsor: **REPRESENTATIVE TIM CALLAHAN, HD 43, GREAT FALLS**

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 25.9 - 28.0}

REPRESENTATIVE TIM CALLAHAN, HD 43, GREAT FALLS, HB 168 was requested by the Public Service Commission (PSC). The bill establishes a state special revenue account, provides for a statutory appropriations from that account, amends the definition for statutory appropriations, and provides for an immediate effective date.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 28 - Side: B; 9.1}

Bob Rowe, Commissioner, Public Service Commission, submitted written testimony on the purpose of HB 168. He also submitted suggested amendments to HB 168 that were requested by Qwest.

EXHIBIT (feh03a01)

EXHIBIT (feh03a02)

Bill Squires, Senior Vice President, Blackfoot Communications, headquartered in Missoula, Montana, said that it is important for continued oversight by the PSC to monitor the performance of Qwest as well as other companies. He said that he would support the passing of HB 168.

Rick Hays, Qwest, Montana (a local service provider for 375,000 customers throughout Montana) said he is in support of this bill.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 9.1 - 19.2}

REPRESENTATIVE JACOBSON asked if the FCC had granted permission for Qwest to enter the multimarkets. **Commissioner Rowe** said, "Yes."

REPRESENTATIVE JACOBSON asked if this legislation was parallel with what the other states are doing. **Commissioner Rowe** said that in talking with Qwest, they felt it was the most sound policy.

REPRESENTATIVE BROWN asked how the consumer is affected. **Bob Rowe** answered that although this would open the market, it doesn't guarantee competition. The competition alone would provide customers with more choices. Also, the wholesale service would become better.

REPRESENTATIVE BROWN asked how the consumer is affected when the competitor gets paid for the nonequalization. **Commissioner Rowe** answered that the penalty paid by the company cannot be recovered by customers but rather by the shareholders.

REPRESENTATIVE JACOBSON asked if in regards to REP. BROWN's question, could it be referenced on page 1, line 19 of the bill. **Bob Rowe** answered, "Yes."

CHAIRMAN BITNEY thanked Commissioner Rowe for testifying and asked that he tell about Informational Forum on the 18th and 3:00 tomorrow with the Senate and his availability to this committee.

Commissioner Rowe said that the PSC will be spending two hours with the Senate committee and would be willing to do the same with the House committee. Saturday, January 18, organizing a day-long forum on energy issues. It will start early in the morning at the Colonial. The forum will discuss the retail market, federal regulation, and then more local issues.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 19.2 - 20.0}

REPRESENTATIVE CALLAHAN thanked the committee for the hearing and questions and asked that, after careful consideration, the committee give HB 168 a do pass.

HEARING ON HB 131

Sponsor: **REPRESENTATIVE NORMA BIXBY, HD 5, Southeastern Montana, Rosebud and Big Horn Counties**

Opening Statement by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 0.5 - 9.5}

REPRESENTATIVE BIXBY indicated that along with Rosebud and Big Horn Counties, there are two reservations in her district (Northern Cheyenne and Crow Indian Reservation). HB 131 would be revising the Code of Ethics clarifying gifts of substantial value which would include a gift given as a traditional or cultural practice or at a cultural event or ceremony. As part of the American Indian culture, gifts are given to honor someone for a variety of reasons, not to buy favor. Families may save for months or years to present gifts at a sacrifice to themselves to honor family or friends. It is considered impolite for Indians and non-Indians to refuse a gift given by a tribal member. It is an insult to the gift giver to have his/her gift refused. She was given a gift of beadwork, valued at about \$75.00, in honor of being the first Northern Cheyenne elected to the legislature. After checking with the Commissioner of Political Practices, she was told it had to be returned. Rather than returning the gift, she gave it as a fund raiser to someone else. Gifts are given to honor individuals and are a large part of the Indian culture. In the American Indian culture, gifts are given to honor an individual, not to buy favor.

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 9.5 - 22.0}

REPRESENTATIVE VERONICA SMALL-EASTMAN, HD 100, Yellowstone and Big Horn Counties, said that she also represents the Crow and Northern Cheyenne Tribes. She is considered a clan aunt who is called upon to pray for clan children. It is part of her prayer for an individual to have a good life. When persons have made significant accomplishments or are in a certain position, they are considered role models. They are asked to pray for others or "go into a sweat" so that others can reach such status. Gifts are given as a way of showing appreciation for the prayers of a clan aunt. Gifts can be quite extravagant. The tradition is to not live in greed, but to live in helping and giving and be of service to other people. We ask support for this bill to allow the acceptance of gifts from Native Americans, regardless of the cost.

REPRESENTATIVE CAROL JUNEAU, HD 85, Glacier County, indicated that the majority of her district is in the Blackfoot Reservation. She supports HB 131 and agrees with REP. BIXBY and REP. SMALL-EASTMAN. It is an honor for American Indians to recognize others in the way of giving gifts.

Bruce Plummer, representing family from Fort Belknap, indicated that the reason this issue is coming to the forefront is that more American Indians are being elected to public office. He hoped that the committee would view this as a culture and religious issue. The Indian people sacrifice for long periods of time to provide gifts to honor individuals.

Susan Guerin, Confederate Tribe, Warm Springs, Oregon, said that she is here to gather information and support current Native American legislators. She is learning from them and her tradition requires that she gives them a gift at the end of this process in return for what they have given her.

Opponents' Testimony: None

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 22 - 26.9}

REPRESENTATIVE RICE indicated that the law seemed to limit the gifts given by business not by a friend or relative and questioned if the gifts given by Native Americans wouldn't be

considered from a friend. **REP. BIXBY** said that the Tribal Government is a business or sovereign nation.

REPRESENTATIVE RICE asked her to clarify that persons are prohibited from receiving a gift, over \$50 in value, from a tribe, not an individual. **REP. BIXBY** answered that it could be an organization, individual or family.

REPRESENTATIVE LASZLOFFY asked **REP. SMALL-EASTMAN** if a gift is given in hopes that the individual would sometime rise to that position. **REP. SMALL-EASTMAN** said that was correct. She also added that gifts from Tribal members was similar to when governments, such as Canada, gives gifts to the President; or as in the case of China presenting the United States with the Panda Bear. Under the Code of Ethics, it would be against the law to accept these gifts.

REPRESENTATIVE LASZLOFFY asked if they are precluded from praying for that person if they cannot accept the gift. **REP. SMALL-EASTMAN** answered that it does not preclude them from praying for that person, but it is an insult to the person when they cannot accept the gift.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 26.9 - 28.9}

REPRESENTATIVE BIXBY said that this is an issue that is hard to understand due to the diversity of cultural values of the different tribes throughout the United States. Ceremonies may be for the same purpose, but are celebrated in different ways. She asked that this committee support HB 131.

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
TELECOMMUNICATIONS

January 8, 2003

PAGE 9 of 9

ADJOURNMENT

Adjournment: 4:25 P.M.

REP. ROD BITNEY, Chairman

GLENNA MCCLURE, Secretary

RB/GM

EXHIBIT (feh03aad)